

Before the
Federal Communications Commission
 Washington, D.C. 20554

RECEIVED

OCT - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Telecommunications Services)

Inside Wiring)

Customer Premises Equipment)

In the Matter of)

Implementation of the Cable Television)

Consumer Protection and Competition)

Act of 1992)

Cable Home Wiring)

CS Docket No. 95-184

MM Docket No. 92-260

REPLY COMMENTS OF BELL ATLANTIC¹

The myriad of complex and intrusive proposals presented in the comments show that the Further Notice² has diverted the Commission's and the parties' attention from the most important goal of this proceeding. The Notice, released in early 1996, recognized the need to consolidate the differing Commission regulations governing establishment of rate demarcation points ("RDPs") for inside wiring used for broadband (primarily video) and for telephone services.³ The Commission acknowledged in the Notice that broadband and narrowband

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² ***Further Notice of Proposed Rulemaking***, FCC 97-304 (rel. Aug. 28, 1997) ("Further Notice").

³ ***Notice of Proposed Rulemaking***, 11 FCC Rcd 2747 (1996) ("Notice").

telecommunications are converging, with video and telephone service providers competing head-to-head in both sub-markets, and that disparate regulatory requirements “may cause confusion and impede the development of competition.”⁴

Every party that addressed the RDP issue in comments on the Notice concurred that convergence requires the RDP rules to be merged.⁵ Yet the proposals in the Further Notice and in most of the comments would result in rate demarcation point rules governing video services that would diverge even more from those governing telephony. As the one party that directly addressed the convergence issue pointed out, “[i]t is unfortunate that the *Further Notice* essentially abandons the rationale of convergence on which this proceeding was largely based... [I]t makes little sense to maintain two distinct regulatory schemes.”⁶ Even though the convergence may not be occurring as quickly as the Commission may have expected when it issued the Notice, prospective rules that are intended to regulate all present and future inside wiring installations should nevertheless take convergence into account, because broadband and narrowband telecommunications services will certainly converge in the coming years.

Accordingly, before adopting complex rules governing the disposition of cable wiring when either a building or individual unit changes video service providers,⁷ the Commission should resolve the issues raised in the Notice and adopt a common rate demarcation

⁴ *Id.* at ¶ 3

⁵ *See* Reply Comments of Bell Atlantic at 1-2 (filed Apr. 17, 1996) (“Bell Atlantic Reply”).

⁶ Comments of the Community Associations Institute at 7.

⁷ A glance at the flow charts that attempt to “explain” the Commission’s proposed disposition rules will demonstrate the complexity of the proposals. *See* Further Notice at App. B.

point (“RDP”) for broadband and narrowband, as Bell Atlantic proposed.⁸ In addition, as shown below, the public interest will be best served if the Commission applies to video wiring some of its policies regarding access to telephone inside wiring.

In telephony, the Commission has long prohibited an incumbent service provider from denying another service provider access to the unused portion of existing inside wire.⁹ Under that requirement, regardless of who owns the wiring, if a tenant or multi-dwelling unit (“MDU”) owner obtains service from an alternative telephone service provider, that provider may use the inside wiring to reach the end user. Telephone companies that find they have stranded wiring investment have taken several alternative measures to recoup that investment. In some cases, they have sold the wiring to the building owner at the remaining book value. In others, they have obtained permission from the state commission to amortize the remaining book value of all stranded wiring investment in the rates for all services. In still other cases, they have chosen simply to abandon the wiring, recognizing that they will still compete to provide service and will benefit from guaranteed access to serve remaining customers in the MDU.

A similar approach should be applied in the video arena. First, the Commission should find that the public interest will be harmed if an incumbent video provider removes or disables¹⁰ the wiring that is currently inside an MDU.¹¹ Removal is likely to be costly and

⁸ *See* NYNEX Comments (filed Mar. 18, 1996), Bell Atlantic Reply.

⁹ *See, e.g., Detariffing the Installation and Maintenance of Inside Wiring*, 1 FCC Rcd 1190, ¶ 35 (1988).

¹⁰ Under the Commission’s proposal, the incumbent may not disable the wiring without removing it. *See* Further Notice at ¶¶ 15-17, 35, 39, and App. D, proposed § 76.804 (a)(1) and (b)(1).

¹¹ This assumes the existing wiring is adequate to meet the service needs of the tenants. If it is not, new wiring should be installed and operational before the existing inadequate wiring is removed, in order that service can be maintained.

disruptive to all tenants in the MDU, as would installation of replacement wiring. End users are likely to be deprived of service during the transition period between removal and new installation. The duplicative costs of removing and rewiring an MDU would need to be paid by the service provider or the MDU owner, or both, and will ultimately be borne by the tenant in the form of higher service rates or increased rent. Therefore, the Commission should prohibit an incumbent video provider from removing or disabling serviceable wiring in an MDU when it no longer provides service over that wiring.¹²

Second, the Commission should encourage the incumbent service provider and the MDU owner to enter into good faith negotiations for sale of the wiring in all cases, without giving the incumbent the option to remove it.¹³ If a price cannot be agreed upon in a reasonable time, such as thirty days, the MDU owner should be permitted to lease the wiring from the incumbent.¹⁴ The lease rate should cover no more than the remaining book value of the wiring, amortized over a reasonable period.¹⁵ Once the amortization period is concluded, the MDU owner would have no more obligation to the previous incumbent, and the latter would be prohibited from exercising any dominion or control over the wiring.

¹² Such a prohibition would also be consistent with Congressional intent in the 1992 Cable Act regarding disposition of cable wiring when a subscriber changes video providers. *See, e.g.*, H.R. Rep. No. 628 (102d Cong. 2d Sess.) at 118 (The right to acquire the wiring “would enable consumers to utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause.”).

¹³ In the Further Notice at ¶¶ 37 and 40, the Commission provides for such negotiation, but only if the incumbent elects not to remove the wiring. In any event, the incumbent should be given the option to elect simply to abandon the wiring and moot the need for negotiation.

¹⁴ The MDU owner should have the right, if it wishes, to require the new service provider to pay the lease charge.

¹⁵ In the absence of an agreement to the contrary, the Commission should prescribe a default amortization period, such as five years.

In addition to access to existing wiring, most of the comments discuss whether or not the Commission should mandate access to moldings and conduits in the buildings for the installation of additional wiring.¹⁶ If the Commission provides for such access, it must also recognize that the clearances within moldings and conduits may be very tight, and access may carry with it a significant risk of damage to the wiring, both telephone and video, that is already inside the structure. If the existing wiring is damaged, end users served by that wiring could have their video or telephony service disrupted until the wiring is repaired. Therefore, any entity that uses the moldings and conduits within a building should be held liable for damage to the property of entities with existing wiring in the structure and to end users for any service disruptions that may result.

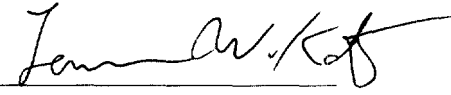
Respectfully Submitted,

**The Bell Atlantic Telephone
Companies**

By their Attorney

Michael E. Glover
Betsy L. Roe
Of Counsel

October 6, 1997


Lawrence W. Katz

1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

¹⁶ The Commission proposes to deny the incumbent provider the right to veto access, so long as there is sufficient room and the MDU owner does not object. Further Notice at ¶ 83.